Brief of Morris for Petitioner

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In the Supreme Court of the United States.

In re MISSOURI, KANSAS & TEXAS TRUST COMPANY, Petitioner.

Brief of Theodore M. Krumseig, et al., Appellees, opposing the application of Petitioner for Writ of *Certiorari*.

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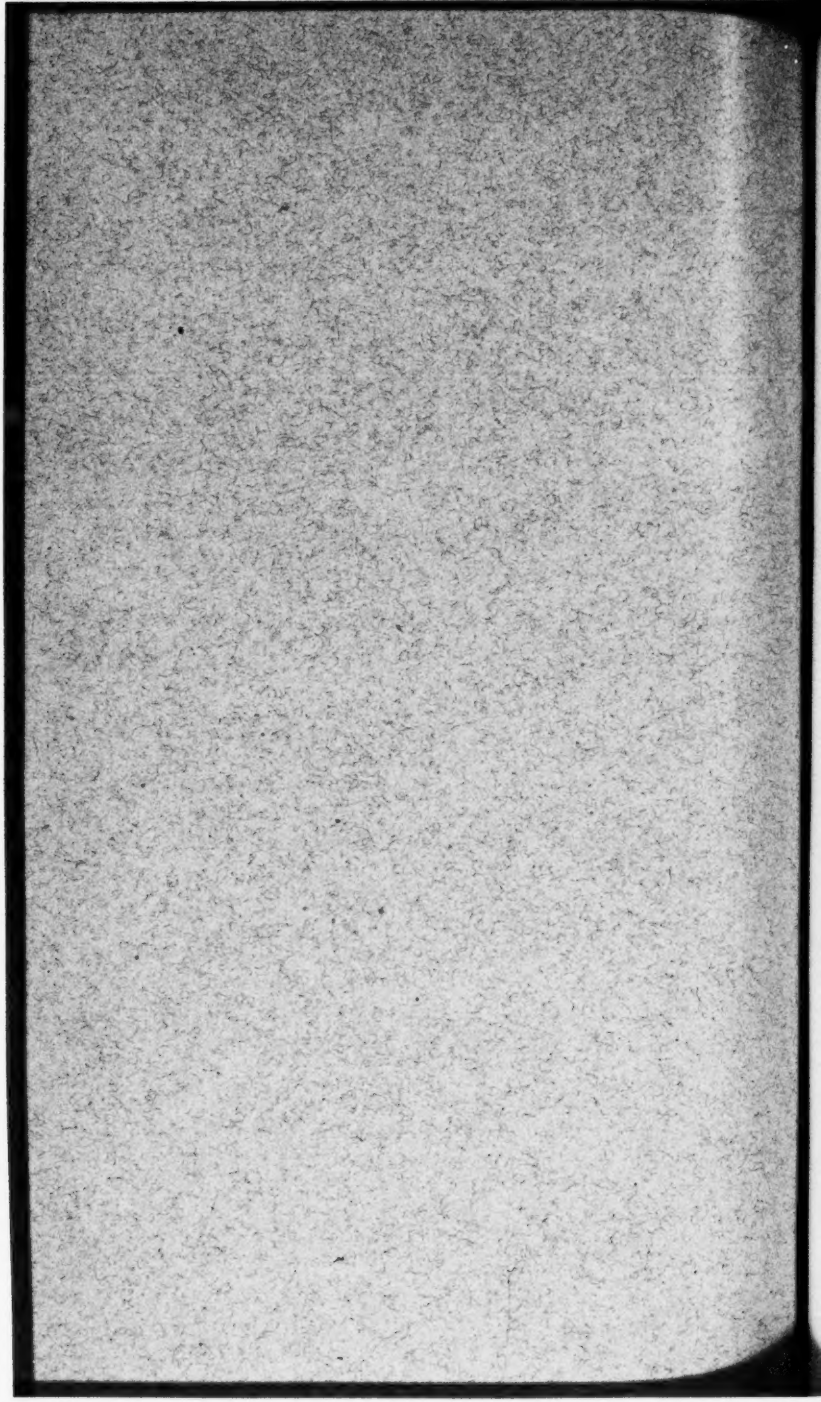

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In re MISSOURI, KANSAS & TEXAS TRUST COMPANY, Petitioner.

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The petition for Writ of *Certiorari* herein should be denied, as an extraordinary and unnecessary use of the power of this court.

The sole ground alleged by the petitioner is to secure uniformity in the judgments of the courts of the United States.

(Paragraph 19, page 10 of Petition.)

1. Counsel submit that there is no lack of harmony between the general and uniform law on the subject, and the decision of the court of appeals in this case.

2. Counsel further submit, that the error alleged by petitioner only reaches to and effects one branch of the two separate and distinct branches of the case, on either one of which the decision of the court of appeals could securely rest; and that, therefore, in failing to allege error of an independent ground of decision, and in attacking the other, solely, petitioner fails to make out an occasion for use of the extraordinary power so seldom used by this court.

I.

THERE IS NO LACK OF UNIFORMITY BETWEEN THE DECISION COMPLAINED OF BY PETITIONER AND THE LAW.

The error alleged by petitioner is, that the court of appeals held it necessary to recognize the state law and follow it, by holding that it was not a bar to the relief sought by complainants, that they had not offered to repay the sum loaned with lawful interest. The court followed the rule established in the state by

Scott vs. Austin, 36 Minn., 460.
Exley vs. Berryhill, 37 Minn., 182.

This was the law of Minnesota in 1890, when the petitioner's contract was made, and it thus became part of the contract.

Brine vs. Insurance Co., 96 U. S., 627.

The court of appeals held that this right thus established by the Minnesota law was a substantial right and rule of property in the state and was binding on the Federal Court, to which the case had been removed, on ground of diverse citizenship, from the state court.

Petitioner attacks this as error.

The question is, "Is such right given by the state law a substantial one and a rule of property in the state, or is it a mere rule of court and matter of practice?" If mere matter of practice, then the Federal Court was not bound to follow and recognize the right given by the state law. It seems too plain for serious argument, that the right thus given to complainants by the state law is a valuable and substantial one; and that it must follow that the court of appeals committed no error, but decided in perfect harmony with the law established by this court in many cases.

Opinion of Justice Caldwell, on pp. 129, 130 and 131, of printed record herein, and cases cited therein.
Chicago Union Bank vs. Kansas City Bank, 136 U. S., 223.
Etheridge vs. Sperry, 139 U. S., 267.
Brine vs. Insurance Co., 96 U. S., 627.
Bendey vs. Townsend, 109 U. S., 668.
Lippincot vs. Mitchell, 94 U. S., 766.
McGoon vs. Scales, 9 Wall., 23.
Parker vs. Dacres, 130 U. S., 43.
Foster, Federal Practice, Sec. 298.
Beach, Equity Practice, Vol. 1, Sec. 6, and cases cited.

It necessarily follows on the above premises, that complainant's right being substantial and not mere matter of practice and form, that petitioner's alleged ground of lack of uniformity in the judgment complained of, is wholly baseless, and no other point is put forth.

II.

PETITIONER'S ALLEGED ERROR ONLY REACHES ONE OF THE TWO GROUNDS OF THE DECISION.

It rested—

First. On the ground that the contract in question was usurious, and that plaintiffs were entitled to have the mortgage cancelled without payment or tender of principal with legal interest.

Second. On the ground that the contract was in violation of the state insurance laws and void.

Petitioner's application is deficient, therefore, in not alleging error as to the second above stated ground of the decision complained of.

III.

As to the matters stated in the next to last sentence of paragraph nineteen (19) of the petition, counsel submit that they have no knowledge or information thereof, other than as stated in said petition. As to remarks of one or more judges, verbal or written, they are no matter of record. No certification was made or asked for, and counsel submit that such extraneous matters be not considered.

It is submitted under the authority of

In re. Woods, Petitioner, 143 U. S., 202.

American Construction Co. vs. Jacksonville Railway, 148 U. S., 372.

that the petition should be denied, as not justified by the practice of the court, or the plain purposes of the Act of Congress of March 3rd, 1891, which were to relieve this overburdened court and hasten the end of litigation.

Wherefore, judgment for dismissal of petitioner's application, with costs, is hereby asked for.

Respectfully submitted,

Page Morris.

Attorney for Theodore M. Krumsieg, et al.

J. B. Richards, of Counsel.